

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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WEB TRACKING SOLUTIONS, LLC.  
and DANIEL WEXLER,

Plaintiffs/  
Counterclaim Defendants,

- against -

Case No. 1:08-cv-03139 (RRM) (RER)

GOOGLE, INC.

Defendant/  
Counterclaim Plaintiff.

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**STIPULATION AND JOINT REQUEST  
FOR ENTRY OF JUDGMENT OF NON-INFRINGEMENT**

Plaintiffs Web Tracking Solutions, LLC and Daniel Wexler (“Plaintiffs”) and Defendant Google, Inc. (“Defendant”), by their undersigned counsel, hereby stipulate and agree, subject to the approval of the Court, as follows:

1. On July 31, 2008, Plaintiffs commenced this action against Defendant for infringement of U.S. Patent No. 5,960,409 (“the ‘409 patent”), and subsequently filed amended complaints on August 1, 2008, and August 4, 2008. Defendant answered the complaint, denied infringement, and filed counterclaims on November 3, 2008, and in amended answers dated December 9, 2008, and December 29, 2009.

2. On July 27, 2010, Magistrate Judge Ramon E. Reyes Jr. issued a Report and Recommendation (“the R&R”) on claim construction for the ‘409 Patent. In that R&R, Magistrate Judge Reyes adopted Defendant’s proposed construction of certain terms in the ‘409 patent, including the term “Fourth Web site” as used in Claim 1. The Court’s construction of

“Fourth Web site” in Claim 1 also applies to “Fourth node” in Claim 7 and “First Web site, Second Web site, and Third Web site” in Claims 1 and 9.

4. The R&R recommended construction of “Fourth Web site” as “a Web site owned and operated independently from the first, second, and third Web sites, and that performs the function of an unbiased third-party accounting and statistical service.”

5. On August 31, 2010, Plaintiff filed Objections to that portion of the R&R relating to the construction of “Fourth Web site.”

6. On August 3, 2011, Judge Roslyn E. Mauskopf issued an order adopting the claim constructions in the R&R.

7. In their Infringement Contentions submitted in this action, Plaintiffs accused Defendant’s AdSense system of infringing claims 1-11 of the ‘409 Patent. Defendant represents that in the accused AdSense system, Defendant bills advertisers based on the number of clicks or impressions their ads receive, and Defendant tracks those clicks or impressions.

8. Based on the Court’s construction of “Fourth Web site,” “Fourth node” and “First Web site, Second Web site and Third Web site,” together with Defendant’s representation as to the method of Defendant’s billing in the AdSense system, Plaintiffs and Defendant stipulate that Defendant’s AdSense system and/or methods of using this system have not infringed and do not infringe the ‘409 Patent.

9. Given Plaintiffs’ stipulation of non-infringement above, Defendant stipulates to the dismissal without prejudice of its defenses and counterclaims in this action. This stipulation of dismissal without prejudice is made subject to Defendant’s reservation of rights to reassert these or other counterclaims and defenses relating to the ‘409 Patent should Plaintiffs’

infringement claims regarding the '409 Patent be revived for any reason (including, but not limited to, modification of the Court's claim constructions on appeal).

10. The parties stipulate that each party should bear its own fees and costs, including attorney fees, in connection with this action.

Given these stipulations, and to promote judicial economy, the parties jointly and respectfully request that the Court enter final judgment of non-infringement for Defendant and against Plaintiffs in the form shown in the attached Exhibit A. This judgment would resolve all claims, defenses, and counterclaims in this action, and would be a final judgment that enables the Court to close this case, pending any appeal.

WEB TRACKING SOLUTIONS, LLC  
AND DANIEL WEXLER

By their attorneys,

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